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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/722,647	11/28/2000	Carey Cooper	04707.84238	4592

22907 7590 04/08/2003

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WASHINGTON, DC 20001

EXAMINER

SAFAVI, MICHAEL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 04/08/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/722,647

Applicant(s)

COOPER, CAREY

Examiner

M. Safavi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 January 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 29-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 29-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “pultruded connectors interposed between adjacent vertical wall panels for bounding together,...having opposed receiving pockets configured [to] receive and seal an interior of said enclosure” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 31 and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear as to what is being defined by the language of claims 31 and 33. The specification does not appear clear as to any “pultruded connectors interposed between adjacent vertical wall panels for bounding together,...having opposed receiving pockets configured [to]

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receive and seal an interior of said enclosure” or “the connectors further comprise a two receiving pockets being opposed longitudinally”.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1-11, 29, 31 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Eckel. Eckel discloses, Figs. 1-5, an enclosure having interconnecting wall, floor, and ceiling panels formed of fiber resinous composite matrix, col. 4, line 7, with planar sheet 12, 14 attached to a plurality of spaced support members 16 disposed therebetween. Fiber resin angle members or connectors 34, 36 serve to bond longitudinal wall panel to lateral wall panels. Overlapping joint is formed as by 58/84 or 60/84.

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Claims 1-11 and 29-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Rothman. Rothman discloses, Figs. 1, 4, and 5, an enclosure having interconnecting wall, floor, and ceiling panels 20 formed of fiber resinous composite matrix having unidirectional glass fiber rovings, col. 7, lines 41-51, with planar sheet 22, 24 attached to a plurality of spaced support members 26, 44 disposed therebetween forming spaced interstitial pockets interposed between the planar sheets. Fiber resin angle members or connectors 26, including portions 28 thereof, serve to bond longitudinal wall panel to lateral wall panels. Overlapping joint is formed as by 28 of each connector 26. The panels comprise at least 40% fiberglass by weight, col. 6, lines 27-33.

### ***Response to Arguments***

Applicant's arguments filed January 13, 2002 have been fully considered but they are not persuasive. The Eckel panels do comprise 40% fiberglass by weight with Figs. 2-5 disclosing fiberglass filler as well as fiberglass reinforced plastic 12, 14, 16.

As for Applicant's argument to "pultruded", the patentability of a claim to a product does not depend on merely a difference in its method of production, but on whether the product itself is new and unobvious. *In re Pilkington*, 411 F.2d 1345, 1348, 192 U.S.P.Q. 145, 147 (CCPA 1969). If the product in a product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Fessman*, 489 F.2d 742, 180 U.S.P.Q. 324 (CCPA 1974) and *In re Thorpe*, 777 F.2d 695, 227 U.S.P.Q. 964 (Fed. Cir. 1985). When the prior art discloses a

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product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 450 F.2d 531, 173 U.S.P.Q. 685 (CCPA 1972). This burden is NOT discharged solely because the product was derived from a process not known in the prior art. *In re Fessman, supra*.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (703) 308-2168.

A handwritten signature in black ink, appearing to read 'M. Safavi', with a stylized, cursive script.

**MICHAEL SAFAVI  
PRIMARY EXAMINER  
ART UNIT 354**

M. Safavi  
April 7, 2003